

**Introduced by Senator Cedillo**

February 20, 2003

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An act to add Section ~~25365.8~~ 25400.5 to the Health and Safety Code, relating to hazardous ~~substances~~ *materials*.

LEGISLATIVE COUNSEL'S DIGEST

SB 493, as amended, Cedillo. Hazardous ~~substances~~ *materials*: liability.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions. ~~The act defines "responsible party" and "liable person" as those persons described in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and provides that specified defenses identified in the federal act are available to a responsible party or liable person.~~

*Existing law, including the Porter-Cologne Water Quality Control Act and the provisions regulating hazardous waste and releases from underground storage tanks, impose various requirements with regard to corrective action and cleanup and abatement, upon persons subject to those acts.*

~~This bill would declare the Legislature's intent to exempt a person who is not liable for response costs under the federal act because he or she is a bona fide prospective purchaser, a contiguous property owner, or an innocent purchaser, from the imposition of response costs by the state or any political subdivision thereof immunize an innocent purchaser or a bona fide prospective purchaser, as defined in the federal Comprehensive Environmental Response, Compensation, and Liability~~

*Act of 1980 (CERCLA), from liability under specified state or local laws for the cost of response associated with a release or threatened release of a hazardous material at a site, if the innocent purchaser or bonafide prospective purchaser meets specified conditions. The bill would also immunize a person from liability under specified state or local laws for response costs associated with a release or threatened release of a hazardous material from a site that is not owned by that person, if the person owns real property that is contiguous to, or otherwise similarly situated with respect to, that site and the person complies with specified requirements set forth in CERCLA.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1.   Section ~~25365.8~~ 25400.5 is added to the Health
- 2     and Safety Code, to read:
- 3     ~~25365.8.—The Legislature intends to exempt a person who is~~
- 4     ~~not liable for response costs under the federal act because he or she~~
- 5     ~~is a bona fide prospective purchaser, a contiguous property owner,~~
- 6     ~~or an innocent purchaser, from the imposition of response costs by~~
- 7     ~~the state or any political subdivision thereof.~~
- 8     25400.5. (a) *For the purposes of this section, the following*
- 9     *terms have the following meaning:*
- 10    (1) *“Applicable statute” means any of the following:*
- 11    (A) *Division 7 (commencing with Section 13000) of the Water*
- 12    *Code.*
- 13    (B) *Chapter 6.5 (commencing with Section 25100), Chapter*
- 14    *6.7 (commencing with Section 25280), Chapter 6.75 (commencing*
- 15    *with Section 25299.10), and Chapter 6.8 (commencing with*
- 16    *Section 25300).*
- 17    (C) *Any other state or local law providing liability for the*
- 18    *response costs associated with a release of a hazardous material.*
- 19    (2) *“Bona fide prospective purchaser” has the same meaning*
- 20    *as defined in paragraph (40) of Section 101 of the federal act (42*
- 21    *U.S.C. Sec. 9601(40)).*
- 22    (3) *“Innocent purchaser” means a person who meets the*
- 23    *requirements for the exemption from liability set forth in*
- 24    *paragraph (3) of subsection (b) of Section 107 of the federal act*
- 25    *(42 U.S.C. Sec. 9607(b)(3)).*

1     (4) “Hazardous material” has the same meaning as defined in  
2 paragraph (8) of subdivision (a) of Section 25395.20.

3     (5) “Response” includes a response action as defined in  
4 Section 25323.3, or a response action subject to other applicable  
5 statute.

6     (6) “Site” means an area, location, or facility where a  
7 hazardous material has been released or threatens to be released  
8 into the environment.

9     (b) (1) Notwithstanding any other provision of state law,  
10 including, but not limited to, Section 25323.5, an innocent  
11 purchaser or a bona fide prospective purchaser is not liable under  
12 any applicable statute for any costs of response associated with a  
13 release or threatened release of a hazardous material at a site, if  
14 the innocent purchaser or bona fide prospective purchaser’s  
15 potential liability for the release or threatened release is based  
16 solely on the person’s ownership or operation of the site, including,  
17 but not limited to, if the person, due to possession or control of the  
18 site, is authorized to undertake a response action at the site.

19     (2) Paragraph (1) does not apply if the innocent purchaser or  
20 bona fide prospective purchaser impedes the performance of any  
21 response action or natural resources restoration associated with  
22 the release or threatened release.

23     (c) Notwithstanding any other provision of state law, including,  
24 but not limited to, Section 25323.5, a person is not liable under any  
25 applicable statute for any costs of response associated with a  
26 release or threatened release of a hazardous material from a site  
27 that is not owned by that person, if all of the following apply:

28     (1) The person owns real property that is contiguous to, or  
29 otherwise similarly situated with respect to, the site, and the real  
30 property owned by that person is, or may be, contaminated by a  
31 release or threatened release from the site.

32     (2) The person complies with the requirements set forth in  
33 clauses (i) to (viii), inclusive, of subparagraph (A) of paragraph  
34 (1) of subsection (q) of Section 107 of the federal act (42 U.S.C.  
35 Sec. 9607(q)(1)(A)(i)-(viii)).

36     (d) The immunity provided by this section is in addition to, and  
37 does not otherwise affect, any other immunity provided under state  
38 law.

- 1     *(e) This section does not exempt a person from liability for*
- 2     *bodily injury or wrongful death.*

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